

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Ms. Daniel Patrick Benz-Whitebird, *a.k.a.*  
*Danielle Whitebird*,

Civ. No. 23-469 (JWB/DJF)

Plaintiff,  
v.

**ORDER ACCEPTING  
REPORT AND RECOMMENDATION  
OF MAGISTRATE JUDGE**

Paul Schnell *et al.*,

Defendants.

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United States Magistrate Judge Dulce J. Foster issued a Report and Recommendation (“R&R”) on December 12, 2023. (Doc. No. 66.) No objections to the R&R have been filed in the time permitted. In the absence of timely objections, the R&R is reviewed for clear error. *See* Fed. R. Civ. P. 72(b); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996). A portion of the R&R has become moot because the parties stipulated to dismiss Defendants Dr. Gutenkauf and Dr. Truitt on January 8, 2024. (*See* Doc. Nos. 69, 71.) Having reviewed the remainder of the R&R, no clear error is found.

Based on the R&R of the Magistrate Judge, and on all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. The December 12, 2023 Report and Recommendation (Doc. No. 66) is **ACCEPTED**, except that the portion of the R&R addressing Plaintiff’s claims against Defendants Dr. Gutenkauf and Dr. Truitt in their individual capacities is moot; and
2. Defendants’ Motions to Dismiss (Doc. Nos. 23, 35) are **GRANTED IN PART AND DENIED IN PART** as follows:

- a. Plaintiff's claims against "Unknown Department of Corrections Employees," Dr. Louis Schicker, and "Unknown Centurion of Minnesota L.L.C. Employees" are **DISMISSED**;
- b. Plaintiff's claims under the Americans with Disabilities Act and the Rehabilitation Act are **DISMISSED**;
- c. Plaintiff's failure to protect claims are **DISMISSED** as follows:
  - i. Plaintiff's claims for damages are **DISMISSED** for failure to state a claim; and
  - ii. Plaintiff's claims for declaratory and injunctive relief are **DISMISSED AS MOOT**; and
- d. Defendants' Motions are **DENIED** with respect to Plaintiff's *Monell* claim against Defendant Centurion of Minnesota LLC and with respect to Defendants' request for an order limiting Plaintiff's damages.

Date: January 16, 2024

s/ Jerry W. Blackwell  
JERRY W. BLACKWELL  
United States District Judge